

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

74-2667 B

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UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

PASQUALE A. NATARELLI,
a/k/a PAT NATARELLI,

Appellant,

v.

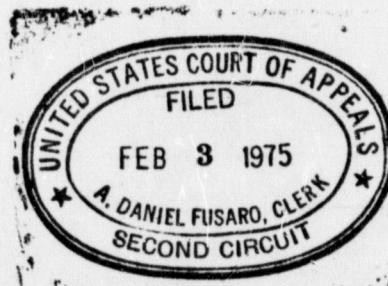
UNITED STATES OF AMERICA,

Appellee.

Docket No. 74-2667

APPENDIX OF PETITIONER-APPELLANT

SALTEN RODENBERG
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES

- vs -

PASQUALE A. NATARELLI

Motion under 28 U.S.C. 2255
to Vacate Sentence and for
Resentence.

SALTEN RODENBERG
400 Walbridge Building
Buffalo, N.Y. 14202
Attorney for defendant

GERALD J. HOULIHAN
Assistant United States Attorney
for the government

By notice of motion and affidavit filed
September 10, 1974, the defendant moves for an order
pursuant to Title 28, U.S.C. Section 2255 to vacate the
sentences imposed herein and to direct resentence on the
ground that the original sentences imposed were illegal.

By indictment returned August 18, 1967 the
defendant and four co-defendants were charged with two
separate crimes of conspiracy. By the first count of the
indictment Natarelli was charged with conspiracy under
Title 18 U.S.C. Section 1951. By the second count of the
indictment he was charged under the general conspiracy
statute, Title 18, U.S.C. Section 371, with conspiracy to
transport stolen property in interstate commerce in

violation of Title 18, U.S.C. Section 2314. After a jury trial a verdict was returned on November 21, 1967 finding Natarelli and his co-defendants guilty on each count.

On December 11, 1967 this court (Henderson, J. deceased) sentenced the defendant Natarelli on both counts, imposing a term of 20 years imprisonment on the first count and 5 years imprisonment on the second count, the terms to be served concurrently. Natarelli is now imprisoned in the U.S. Penitentiary at Atlanta, Georgia, under the judgment of conviction and sentence.

In this proceeding Natarelli contends that the sentences were illegal because the proof established only a single conspiracy and therefore that it was improper and illegal for the court to impose a sentence under each of counts 1 and 2 of the indictment.

The plan, hatched in Buffalo on February 4 and 5, 1965 by several of the conspirators, one of whom (Sorgi) was the security officer of the Beverly Hilton Hotel, Los Angeles, California, was to rob a messenger of the armed transport which picked up the daily receipts of the hotel, estimated to be about \$100,000.00, and a proposed jewel robbery. The proposed victim of the jewel robbery was a Mrs. McCune of Rancho Sante Fe, California and Phoenix, Arizona. She had

been a periodical guest at the Beverly Hilton Hotel prior to February of 1965 and had maintained under her personal control jewelry valued at \$400,000 to \$500,000. She had already been robbed of jewelry valued at \$80,000 at the hotel in 1962. She was expected to return as a guest at the hotel on February 11, 1965. She had a horse running at the Santa Anita Race Track on the following day. She was then the owner of a stable of race horses. The plan went sour because Mrs. McCune became ill and did not check in at the hotel as expected. The plan was to conduct the jewel robbery first and then the robbery of the messenger of the armed transport. A few days later, on February 17, 1965 one of the conspirators (Cino) was recalled to Buffalo because of new developments in a City Hall robbery at Buffalo in which one of the conspirators, Calabrese, had been involved. On February 22, 1965 Calabrese was back in Buffalo and surrendered himself to Buffalo authorities on the City Hall robbery charge, and was then released on bail. The plan was never revived. Neither of the planned robberies took place. Calabrese thereafter agreed to, and did, testify for the government at the trial. He was named in the indictment as a co-conspirator, but not as a defendant.

An examination of the record of the proceedings at the trial clearly establishes that it was apparent from the opening statement of the prosecutor that the plan which formed the basis of the conspiracy from its very beginning on February 5, 1965 contemplated the commission of two robberies, robbery of a messenger of an armed transport and a jewel robbery. The same four overt acts were alleged in both Counts 1 and 2. The proof established that there was one single plan beginning on February 4, 1965 and finalized on the following day, which plan encompassed the commission of two robberies. The brief of the government on the appeal from the judgment of conviction and sentence is convincing proof that the government throughout the entire case always regarded the plan as one single conspiracy to commit two robberies. In this ninety-one page brief of the government the word conspiracy in the singular occurs thirty-one times. Only once in the entire brief (page 27) is the term used in the plural. There seems to be no logical reason why, in that one instance, the word "conspiracies" was used. In its context the plural "conspiracies" seems in that one instance to have been used interchangeably with the singular "conspiracy", and to have been used to mean conspiracy in the singular. The single agreement to commit two robberies

did not ripen into two agreements, merely because it contemplated the violation of two separate statutes.

Braverman vs. United States, 317 U.S. 49.

It does not follow that Natarelli may collaterally attack the judgment of conviction and sentence in this Section 2255 proceeding. His claim in essence is that the evidence at the trial was insufficient to establish two conspiracies, and that it was an error of law on the part of the trial court to sentence him on the basis of two separate conspiracies. No constitutional question is presented in this proceeding, nor does Natarelli even so claim. Compare Kaufman vs. United States, 394 U.S. 217. Although Natarelli did appeal from the judgment of conviction and sentence, the question presented in this proceeding was not raised on the appeal nor was it determined on the appeal. There is no claim that he was denied the opportunity to raise the question on appeal. In the absence of a question involving the jurisdiction of the sentencing court or a question involving the constitutional rights of Natarelli, he is foreclosed from collaterally attacking the judgment in this Section 2255 proceeding. Sunal vs. Large, 332 U.S. 174, 181, 182.

The motion to vacate the sentence and for resentence is in all respects denied.

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IT IS SO ORDERED.

s/ Harold P. Burke

HAROLD P. BURKE
United States District Judge

November 20, 1974.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs

No. 1967-115

PASQUALE A. NATARELLI a/k/a
PAT NATARELLI

SIRS:

PLEASE TAKE NOTICE, that upon the judgment of conviction and all prior proceedings had and filed herein, and upon the annexed affidavit of his counsel, SALTEN RODENBERG, the defendant, PASQUALE A. NATARELLI, will, on the 10th day of September, 1974, at 10 o'clock in the forenoon thereof, apply to the United States District Court of New York for an order pursuant to Title 28 U.S.C. 2255, vacating the sentence imposed upon defendant herein and directing a resentence of defendant on the ground that the original sentence imposed was contrary to law.

DATED: September 3, 1974
Buffalo, New York

Yours, etc.,

SALTEN RODENBERG
Attorney for Defendant
Office & P. O. Address
400 Walbridge Building
Buffalo, New York 14202

TO: UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

HONORABLE JOHN T. ELFVIN
United States Attorney for
the Western District of New York

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs

No. 1967-115

PASQUALE A. NATARELLI a/k/a
PAT NATARELLI

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

SALTEN RODENBERG, being duly sworn, deposes and says:

That he is counsel for the defendant, PASQUALE A. NATARELLI, and makes this application on his client's behalf, for an order pursuant to Title 28 U.S.C. 2255, vacating the original sentence imposed by this Court and directing a resentence of the defendant herein, on the ground that such original sentence was contrary to law. In support of this application, your deponent states as follows:

FIRST: No previous application for the relief herein requested has been made by or on behalf of the defendant Natarelli to any Court or Judge thereof.

SECOND: By indictment returned the 18th day of August, 1967, (Appendix A), the defendant Natarelli and four co-defendants were charged in this Court with two crimes of Conspiracy. By the first count of the indictment he was charged with Conspiracy under Title 18 U.S.C. 1951, and by the second count of the indictment he was charged under the General Conspiracy Statute, Title 18 U.S.C. 371 with Conspiracy to Transport Stolen Property in Interstate commerce in violation of Title 18 U.S.C. 2314.

THIRD: After trial by jury, a verdict was returned on the 21st day of November, 1967, finding the defendant Natarelli and his co-defendants guilty on each count.

FOURTH: On the 11th day of December, 1967, the Court sentenced the defendant Natarelli on both counts, imposing a term of 20 years imprisonment on the first count and five years imprisonment on the second count and directing that the terms be served concurrently.

FIFTH: The defendant Natarelli is presently incarcerated in the United States Penitentiary at Atlanta, Georgia, pursuant to the aforesaid judgments of conviction.

SIXTH: Defendant grounds his prayer for relief herein on the fact that the Government established only one Conspiracy and even though that Conspiracy envisioned the violation of more than one criminal provision, (§371 and §1951 of Title 18 U.S.C.), it was a single agreement constituting a single offense and, therefore, subject to a single punishment under the authority of Braverman vs United States, 317 U.S. 49. Therefore, defendant submits that it was illegal and improper for the Court to impose a sentence under each count of the indictment since the Court was constrained under the holding in Braverman to sentence under one count only.

SEVENTH: That there was only one Conspiracy is evidenced by an examination of the indictment which alleges the same criminal agreement in each count and which alleges the same overt acts for each count.

EIGHTH: That there was only one Conspiracy involved is

further demonstrated by the Government's prosecutorial theory and the evidence presented on the trial of this indictment. Annexed hereto and marked Appendix B are pages 3 through 9 of the brief submitted on behalf of the Government, to the Court of Appeals for the Second Circuit, on defendant's appeal from the judgment of conviction. It is submitted that this excerpt from the Government's brief clearly shows that only one Conspiracy was established and that, therefore, the holding in Braverman was applicable.

NINTH: It is submitted that the issue presented by this application was neither briefed nor argued in, nor was it determined by, the Court of Appeals, on the appeal from the judgment of conviction.

TENTH: That concurrent rather than consecutive sentences were imposed in the instant case, in no way militates against the defendant's entitlement to the relief sought. See Benton vs Maryland, 395 U.S. 784; where the Court held that there is no jurisdictional bar to consideration of challenges to multiple convictions even though concurrent sentences were imposed.

ELEVENTH: In United States vs Mori, 444 F. 2d 240 (1971) the United States Court of Appeals for the Fifth Circuit had before it an almost identical factual situation as that presented by the instant case. The defendant had been charged in a multi-count indictment with a violation of two Conspiracy Statutes, under one count he had been found guilty of the General Conspiracy Statute and under another count he had been found guilty of a specific Conspiracy Statute. The court imposed concurrent sentences. The Court in Mori held, under the authority of Braverman vs United States, supra; that even though the Conspiracy charged envisioned

the violation of several substantive provisions it was a single agreement which constituted a single offense subject to a single punishment. The Court in Mori further held that where separate sentences on two or more counts are impermissible, the error is not cured by the existence of concurrent sentences and that the proper remedy was to vacate the sentences and remand the matter to the District Court for resentencing on one count.

TWELFTH: Defendant is aware of the holdings of the United States Court of Appeals for the Second Circuit in United States vs Marion, 421 F. 2d 640 (1970); and United States vs Berlin, 472 F. 2d 1002 (1973); he submits, however, that these cases are readily distinguishable from the instant case. In both of these cited cases the Court, on direct appeals from judgments of conviction under multi-count indictments, reversed the convictions as to some counts and affirmed as to others, but did not remand for resentencing because concurrent sentences had been given and the range of the sentences were within the permissible limits for the counts which were affirmed. (But see McFarland vs Pickett, 7th Cir., 469 F. 2d 1277 [1972]). The distinction between the cited Second Circuit cases and United States vs Mori, *supra*, is that in Mori the conviction on each count was a proper one, it was the sentence which was impermissible. In the Marion and Berlin, *supra*, cases the sentences would have been proper had the counts been sustained by sufficient evidence. The error committed in the instant case is, therefore, a basic one in that the Court was without jurisdiction to sentence on both counts and, therefore, the improper and irregular sentence must be corrected.

WHEREFORE, defendant requests that a hearing be held herein pursuant to the provisions of Title 28, U.S.C. 2255 and that the Court direct a resentencing of the defendant and grant such other, further and different relief as it may find just and proper in the premises.

/s/ Salten Rodenberg
Salten Rodenberg

Sworn to before me this
4th day of September, 1974

/s/ Suzanne Szanyi Brownstein
Comm. of Deeds, Buffalo, New York
My Comm. Expires Dec. 31, 1974.

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

CHARLES CACI, also known as Bobby Milano,
STEPHEN A. CINO,
PASQUALE A. NATARELLI, also known as
Pat Natarelli,
FREDERICO G. RANDACCIO, and
LOUIS SORGI.

MARCH 1967

Term

No. 1967-115

Viol. Title 18, U.S.C.
Section 1951;
Section 371.

COUNT I

The Grand Jury charges:

That in or about the month of February, 1965, the exact dates being to the Grand Jury unknown, in the State and Western District of New York and elsewhere, CHARLES CACI, also known as Bobby Milano, STEPHEN A. CINO, PASQUALE A. NATARELLI, also known as Pat Natarelli, FREDERICO G. RANDACCIO, and LOUIS SORGI, the defendants herein, and Pascal Calabrese, named herein as a co-conspirator but not a defendant, unlawfully, wilfully, and knowingly did combine, conspire, confederate and agree together and with each other, and with other persons whose names are unknown to the Grand Jury, to obstruct, delay and affect commerce and the movement of money in commerce, by robbery, that is the unlawful taking by means of actual and threatened force and violence and fear of injury, of money and property belonging to and in the care, custody, control, management and possession of Armored Transport of Los Angeles, Inc., and its agents and employees.

It was a part of the said conspiracy that the defendants PASQUALE A. NATARELLI and FREDERICO G. RANDACCIO would pay all or part of the expenses incurred in the process of planning and executing the robbery and effecting the escape of the robbers and transportation of the stolen money and other valuable consideration to Buffalo, New York.

It was a further part of the said conspiracy that Pascal Calabrese, a co-conspirator not named as a defendant herein, would travel from Buffalo, New York, to Los Angeles, California, and would be met there by defendant CHARLES CACI.

It was a further part of the said conspiracy that the defendant STEPHEN A. CINO would travel from Buffalo, New York, to Los Angeles, California, and would be met there by the said CHARLES CACI and Pascal Calabrese.

It was a further part of said conspiracy that the defendant STEPHEN A. CINO would bring with him from Buffalo, New York, to Los Angeles, California, additional money from the defendants PASQUALE A. NATARELLI and FREDERICO G. RANDACCIO to defray expenses to be incurred in planning and executing the robbery.

It was a further part of the said conspiracy that the defendants CHARLES CACI and LOUIS SORGI would lend assistance in planning and executing the proposed robbery.

It was a further part of the said conspiracy that defendant STEPHEN A. CINO and co-conspirator Pascal Calabrese would rob a messenger of Armored Transport of Los Angeles, Inc., while said messenger was in the Beverly Hilton Hotel, Beverly Hills, California.

It was a further part of the said conspiracy that defendant CHARLES CACI would supply and drive an automobile for the escape of said STEPHEN A. CINO and Pascal Calabrese from the premises after the robbery.

It was a further part of the said conspiracy that the defendant STEPHEN A. CINO would return to Buffalo, New York, with the stolen money and other valuable consideration in his possession and would deliver same to the defendants PASQUALE A. NATARELLI and FREDERICO G. RANDACCIO.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed:

1. On or about February 1, 1965, Pascal Calabrese had a conversation with the defendants STEPHEN A. CINO, PASQUALE A. NATARELLI, and FREDERICO G. RANDACCIO, at the

residence of the defendant PASQUALE A. NATARELLI located at 60 Manchester Place, Buffalo, New York.

2. On or about February 6, 1965, Pascal Calabrese travelled by private automobile from Buffalo, New York, to Pittsburgh, Pennsylvania, and thereafter by commercial airline from Pittsburgh, Pennsylvania to Los Angeles, California.

3. On or about February 10, 1965, Pascal Calabrese met with the defendants CHARLES CACI and STEPHEN A. CINO in Los Angeles, California.

4. On or about February 11, 1965, Pascal Calabrese met with the defendant LOUIS SORGI at the Beverly Hilton Hotel, Beverly Hills, California.

All the above in violation of Section 1951, Title 18, United States Code.

COUNT II

THE GRAND JURY FURTHER CHARGES:

That in or about the month of February 1965, the exact dates being to the Grand Jury unknown, in the State and Western District of New York and elsewhere, CHARLES CACI, also known as Bobby Milano, STEPHEN A. CINO, PASQUALE A. NATARELLI, also known as Pat Natarelli, FREDERICO G. RANDACCIO, and LOUIS SORGI, the defendants herein, and Pascal Calabrese, named herein as a co-conspirator but not a defendant, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other, and with other persons whose names are unknown to the Grand Jury, to commit an offense against the United States; that is, to transport and cause to be transported in interstate commerce goods, wares, merchandise, securities and money of the value of Five Thousand Dollars (\$5,000.00) or more, knowing the same to be stolen, in violation of Section 2314 of Title 18, United States Code.

It was part of said conspiracy that the conspirators herein would take and cause to be taken by robbery of one Mrs. Carol McCune in Los Angeles, California, jewelry of the value of \$5,000.00 or more.

It was a further part of said conspiracy that the conspirators herein, would take and cause to be taken by robbery of a messenger of the Armored Transport of Los Angeles, Inc. money of the value of five thousand dollars (\$5,000.00) or more.

It was a further part of said conspiracy that the conspirators would thereafter transport and cause to be transported said goods, wares, merchandise, securities and money of five thousand dollars (\$5,000.00) or more, from Los Angeles, California, to Buffalo, New York.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed:

1. On or about February 1, 1965, Pascal Calabrese had a conversation with the defendants STEPHEN A. CINO, PASQUALE A. NATARELLI and FREDERICO G. RANDACCIO, at the residence of the defendant PASQUALE A. NATARELLI located at 60 Manchester Place, Buffalo, New York.

2. On or about February 6, 1965, Pascal Calabrese travelled by private automobile from Buffalo, New York to Pittsburgh, Pennsylvania, and thereafter by commercial airline from Pittsburgh, Pennsylvania to Los Angeles, California.

3. On or about February 10, 1965, Pascal Calabrese met with the defendants CHARLES CACI and STEPHEN A. CINO in Los Angeles, California.

4. On or about February 11, 1965, Pascal Calabrese met with the defendant LOUIS SORGI at the Beverly Hilton Hotel, Beverly Hills, California.

All in violation of Section 371 of Title 18, United States Code.

A TRUE BILL:

UNITED STATES ATTORNEY

(S) Alan R. Swain

Foreman

A-16

EX-100
EX-100

No. _____

UNITED STATES DISTRICT COURT

WESTERN District of NEW YORK

XXXXXX Division XXXXXX

THE UNITED STATES OF AMERICA

CHARLES CACI, ^{vs.} also known as Bobby Milano,
STEPHEN A. CINO, PASQUALE A. NATARELLI, also
known as Pat Natarelli, FREDERICO G. RANDACCIO,
and LOUIS SORGI.

INDICTMENT

A true bill,

(Signature)
Foreman.

Filed in open court this 18th day
of August, A. D. 1967

Clerk.

Bail, \$ _____

The Scheme Charged in the Indictment

Count 1 of the Indictment charged that during the month of February, 1965, Frederico G. Randaccio, Pasquale A. Natarelli, Stephen A. Cino, Charles Caci, a/k/a Bobby Milano, Louis Sorgi and Pascal Calabrese combined "to obstruct, delay and affect commerce" through the robbery of money and property while in the possession of an agent of the Armored Transport, Inc. of Los Angeles, California (C. C. 3a).

The Indictment then described the means by which the conspiracy would be carried out, as follows:

Natarelli and Randaccio would pay all or part of the expenses incurred during the execution of the robbery. It was part of the plan that Pascal Calabrese would travel from Buffalo, New York to Los Angeles, California, where he would be met by the defendant Charles Caci (C. C. 4a).

* References to the Government's Appendix will be designated GA with the appropriate page number, for example "GA 32".

References to the record will be designated R, with the appropriate page number.

Where the Government's Brief refers to one of the Defendant's Briefs, that reference will be designated by the initials of that defendant with the appropriate page number, for example "F. R. (Randaccio's Brief) 8". The same will be true with regard to the references made to the Defendants' Appendices.

Citations to exhibits refer to the offering party and the exhibit number, for example "Govt. Ex. No. 5", "Caci Ex. No. 6".

Defendant Stephen A. Cino was also to travel from Buffalo, New York to Los Angeles, California, bringing with him further monies from Randaccio and Natarelli to pay for any expenses incurred in the preparation and execution of the robbery (C. C. 5a).

Defendants Charles Caci and Louis Sorgi would lend assistance in the planning and execution of the robbery, with defendant Charles Caci supplying and driving the escape vehicle, following the robbery (C. C. 5a).

Following the robbery, the plan of the conspiracy was for the defendant Stephen A. Cino to return to Buffalo, New York, with the stolen money, delivering the same to the defendants Natarelli and Randaccio (C. C. 5a).

Count II of the Indictment dealt essentially with the same scheme, but further included as part of the conspiracy the plan to rob a quantity of jewelry valued in excess of Five Thousand Dollars belonging to one Mrs. Carol McCune, and to transport the proceeds of this robbery from Los Angeles, California to Buffalo, New York (C. C. 7a).

Theory

The Government presented its case in chief on the theory that here we had a classic conspiracy, the object of which did not come to fruition because of a completely unforeseeable and intervening event. While the Government is certainly gratified that neither of the proposed robberies occurred as planned, still it must be conceded that it would have been a great deal easier to prove the conspiracy, had the underlying substantive crimes been committed. Where, as here, only the crime of conspiracy was involved, then the proof of such crime must of necessity flow from one (or

perhaps more) of the co-conspirators, for who else would know of the criminal plans.

Once having learned of the existence of such a plan, then investigation may be conducted to secure provable facts, which either do or do not go to confirm the prior existence of the conspiracy. This is the theory upon which the Government proceeded in the trial Court below.

Initially, the co-conspirator Pascal Calabrese testified at length concerning the particulars of the conspiracy and his involvement with the other named co-conspirators in the planned robberies as charged in the Indictment. He was properly subjected to extensive cross examination. Following his testimony, the Government presented rather extensive proof and testimony in substantiation and confirmation of the Calabrese story.

We now summarize that proof on which the Jury concluded that the defendants were guilty as charged.

1. CONSPIRACY

(a) Beginning of the Conspiracy

On December 29, 1964, Pascal Calabrese (hereinafter referred to as Calabrese)* robbed the City Hall of Buffalo (GA 45). Following this robbery, Calabrese went into hiding at various places in the suburbs of Buffalo, New York (GA 45, 46). On Thursday, February 4, 1965 (GA 6, 7), Calabrese was staying at the Maple Leaf Motel on Niagara Falls Boulevard, Buffalo, New York (GA 4). At approximately 8:00 in the evening, Calabrese met with the defendant Stephen A. Cino (hereinafter referred to as

* With regard to the background of witness Pascal Calabrese, the Government concedes that the statement contained in the defendant Cino's Brief at Pages 2 through 4 is accurate.

Cino). Cino told Calabrese that Pat (Pasquale A. Natarelli—GA 3) and Freddie (Frederico G. Randaccio—GA 3) wished to see him (GA 5). Calabrese inquired whether anything was wrong and Cino said, "No, it's in your benefit, we got a couple of scores* for you" (GA 5). Cino told Calabrese that he (Cino) had been in Los Angeles, California, about a month before; that he had seen one of the scores and that he (Cino) had told Freddie (Randaccio) and Pat (Natarelli) about it. Cino inquired whether Calabrese had any money; Calabrese answered that he had a "few hundred left", and they set up a "meet" for the next evening at Pat Natarelli's house on Manchester Street in Buffalo (GA 5; GA 7, 8). The time of the meeting was to be anywhere between 7:30 and 8:00 o'clock (GA 7, 8).

(b) Meeting at Natarelli House—February 5, 1965

The following evening, Friday, February 5, 1965, Calabrese went to the home of the defendant, Pasquale A. Natarelli (hereinafter referred to as Natarelli).* When he (Calabrese) arrived, only Cino and Natarelli were present (GA 7, 8). Calabrese inquired of Natarelli "if anything was wrong", and Natarelli said, "No, no we got a couple of good scores for you out of town. I'll wait until Freddie gets here, I'll tell you about it" (GA 8, 9).

About a half hour after Calabrese arrived, the defendant Frederico G. Randaccio (hereinafter referred to as Randaccio) arrived (GA 47). Randaccio, Natarelli, Cino and Calabrese proceeded into a den and Calabrese asked Randaccio, "Is there anything wrong?" (GA 9). Randaccio

* Term understood by Calabrese in the jargon of the street to mean robberies.

* The question as to the time of Calabrese's arrival and subsequently the arrival of Randaccio will be considered in detail in the Argument.

replied in the negative and asked Natarelli, "Pat, did you tell him anything yet?" Natarelli said that he had not, whereupon Randaccio said, "All right, tell him" (GA 9).

The following conversation ensued:

Natarelli to Calabrese: "We got one, a heist right up your alley, and we got one, a jewelry, with a woman coming in with \$400,000 worth of jewelry, that we want you to take" (GA 9).

Calabrese to Randaccio: "Am I going to do this by myself?"

Randaccio to Calabrese: "No, we'll have Stevie [Cino] coming out in a couple of days to help you out. These two scores, I want you to do the jewelry one first and then take care of the armored truck afterwards. You don't have to worry about anything, all the security is taken care of. We got the connection out there for you" (GA 9).

At this point, Natarelli entered the conversation and asked if Calabrese knew or remembered Louis Sorgi (hereinafter referred to as Sorgi). Calabrese asked if that was the same guy who had previously worked at the "Why Not" tavern in Buffalo, and Natarelli stated that it was (GA 9, 10).

The conversation continued:

Natarelli to Calabrese: "We got another man out there to show you around and introduce you to Louis Sorgi, that is Charley Caci."

Calabrese to Natarelli: "Bobby Milano?"

Natarelli to Calabrese: "That's right" (GA 10).

Calabrese suggested that he could have a couple of friends take him to Pittsburgh, Pennsylvania and he would then fly from there to Los Angeles (GA 10). During this conversation, the question of what was to be done with the

stolen jewelry following the robbery arose, and Randaccio told Calabrese, "I want you to do the jewelry one first. When you get the jewelry give it to Stevie [Cino]. Stevie will bring it to San Francisco to his uncle" (GA 10). Cino's uncle would "fence it off" (GA 10, 11). Cino would then bring the money (fenced jewelry proceeds) back to Buffalo; thereafter returning to Los Angeles to pay off Calabrese. Randaccio said, "Don't worry about Louie or Bobby, we'll already take care of them" (GA 11).

It was agreed that Calabrese would call Cino from Pittsburgh and alert him to his flight number and arrival time in Los Angeles. Cino, in turn, would then call defendant Charles Caci (hereinafter referred to as Caci) in Los Angeles and tell him when and where to meet Calabrese (GA 11).

At the end of the conversation, Natarelli asked Calabrese if he had any money. Calabrese advised that he had a few hundred, but had to leave a little money for his wife. Natarelli reached in his pocket and took out some money. Randaccio asked, "How much you got there?" Natarelli responded, "About three hundred." Randaccio then said, "Here is four hundred more. That will cover your expenses, Steve [Cino] will be coming out in a couple of days. He will have more money for you" (GA 11).

The intended victim of the proposed jewelry robbery, referred to by Randaccio and Natarelli above, was a Mrs. Carol McCune of Rancho Santa Fe, California and Phoenix, Arizona (R. 274—GA 33, GA 44), a steady guest at the Beverly Hilton Hotel (Govt. Ex. Nos. 43, 44 and 45; GA 64, 65; GA 80). Mrs. McCune, while a guest at the hotel prior to February, 1965, had maintained under her personal control jewelry valued at Four to Five Hundred Thousand Dollars (GA 82). This is the same amount that Sorgi told Calabrese the job would be good for (GA 27).

The second proposed robbery was to be of an Armored Transport, Inc. messenger, as he was carrying a pouch containing the daily receipts for the Beverly Hilton Hotel through a tunnel in the basement of the hotel. This robbery was expected to be "good for maybe \$100,000" (GA 23). The actual amounts carried by this messenger throughout the month of February, 1965, are reflected in Government's Exhibit G-40 (GA 53, 56).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PASQUALE A. NATARELLI
a/k/a PAT NATARELLI

Appellant
v.

Docket No. 74-2667

UNITED STATES OF AMERICA

Appellee

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

SUZANNE BROWNSTEIN, being duly sworn, deposes and says:

That on the 29th day of January, 1975, she personally served three copies each of Brief for Petitioner-Appellant and Appendix of Petitioner-Appellant on Theodore J. Burns, Assistant United States Attorney, United States Attorney's Office, Western District of New York, 68 Court Street, Buffalo, New York.

Suzanne Brownstein
Suzanne Brownstein

Sworn to before me this

30th day of January, 1975

Notary Public, State of New York
Notary Public, State of New York
Date: Jan 30, 1975